CHAPTER II

LITERATURE REVIEW

A. Conceptual and Legal Framework

1. Legal system.

System in general is a unitary arrangement, whereby each of the elements in it is essentially unnoticed, but seen by the entire function of the similarity of the composition. Legal is much more difficult to define because of the complex and many viewpoints will be reviewed, yet Oxford Dictionary state that legal (law) is the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.

Legal system in the world is various and there is a diversity between one legal system with another legal systems. According to Eric L. Richard, global business law expert from Indiana University explains The World's Major Legal Systems as follows:[2]

1. Civil law (civil law codified by the civil code), which practiced by continental European countries including the former colony. This legal system is descended from Roman law.

[2]Ade Maman Suherman, Pengantar Perbandingan Sistem Hukum, (Jakarta, PT. Raja Grafindo Persada,2004) pg.21

2. Common Law (law which is based on habits based on precedent or judge made law) This legal system practiced in Anglo-Saxon countries, such as Britain and America

3. Islamic law, which is based on Shariah Islamic law that based on Al Quran and Hadith.

4. Socialist law, this legal system practiced in the socialist countries

5. Sub-Saharan Africa, this legal system practiced in African countries located south of the Sahara desert.

6. Far East, this legal system is a complex legal system which is a blend of civil law, common law and Islamic law as the fundamental basis of community.

2. Geneva protocol 1925.

The **Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare**, usually called the **Geneva Protocol**, is a treaty prohibiting the use of chemical and biological weapons in international armed conflicts. It was signed at Geneva on 17 June 1925 and entered into force on 8 February 1928. It was registered in *League of Nations Treaty Series* on 7 September 1929. [3]The Geneva Protocol is a protocol to the Convention for the Supervision of the International Trade in Arms and Ammunition and in Implements of War

[3] League of Nations Treaty Series, vol. 94, pp. 66-74.

signed on the same date, and followed the Hague Conventions of 1899 and 1907. It prohibits the use of "asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices" and "bacteriological methods of warfare". This is now understood to be a general prohibition on chemical weapons and biological weapons, but has nothing to say about production, storage or transfer. Later treaties did cover these aspects — the 1972 Biological Weapons Convention (BWC) and the 1993 Chemical Weapons Convention (CWC). A number of countries submitted reservations when becoming parties to the Geneva Protocol, declaring that they only regarded the non-use obligations as applying to other parties and that these obligations would cease to apply if the prohibited weapons were used against them.

A. History of Protocol.

In the Hague Conventions of 1899 and 1907, the use of dangerous chemical agents were outlawed. In spite of this, the First World War saw large-scale chemical warfare. France used teargas in 1914, but the first large-scale successful deployment of chemical weapons was by the German Empire in Ypres, Belgium in 1915, when chlorine gas was released as part of a German attack at the Battle of Gravenstafel. Following this, a chemical arms race began, with the United Kingdom, Russia, Austria-Hungary, the United States, and Italy joining France and Germany in the use of chemical weapons. This resulted in the development of a range of horrific chemicals affecting lungs, skin, or

eyes. Some were intended to be lethal on the battle field, like hydrogen cyanide, and efficient methods of deploying agents were invented. At least 124,000 tons was produced during the war. In 1918, about one grenade out of three was filled with dangerous chemical agents. Around 1.3 million casualties of the conflict were attributed to the use of gas and the psychological affect on troops may have had a much greater effect[4]. As protective equipment developed, the technology to destroy such equipment also became a part of the arms race. The use of deadly poison gas was not only limited to combatants in the front but also civilians as nearby civilian towns were at risk from winds blowing the poison gases through. Civilians living in towns rarely had any warning systems about the dangers of poison gas as well as not having access to effective gas masks. The use of chemical weapons employed by both sides had inflicted an estimated 100,000-260,000 civilian casualties during the conflict. Tens of thousands of more (along with military personnel) died from scarring of the lungs, skin damage, and cerebral damage in the years after the conflict ended. In the year 1920 alone, over 40,000 civilians and 20,000 military personnel died from the chemical weapons effects.

The Treaty of Versailles included some provisions that banned Germany from either manufacturing or importing chemical weapons. Similar treaties banned the First Austrian Republic, the Kingdom of

[4] *Handbook of Chemical and Biological Warfare Agents, Second Edition*. CRC Press. pg. 567–570.

Bulgaria, and the Kingdom of Hungary from chemical weapons, all belonging to the losing side, the Central powers. Russian bolsheviks and Britain continued the use of chemical weapons in the Russian Civil War and possibly in the Middle East in 1920.

Three years after World War I, the Allies wanted to reaffirm the Treaty of Versailles, and in 1922 the United States introduced the Treaty relating to the Use of Submarines and Noxious Gases in Warfare at the Washington Naval Conference. Four of the war victors, the United States, the United Kingdom, the Kingdom of Italy and the Empire of Japan, gave consent for ratification, but it failed to enter into force as the French Third Republic objected to the submarine provisions of the treaty.

At the 1925 Geneva Conference for the Supervision of the International Traffic in Arms the French suggested a protocol for non-use of poisonous gases. The Second Polish Republic suggested the addition of bacteriological weapons. It was signed on 17 June.[5]

[5] Eric A. Croddy, James J. Wirtz (2005). *Weapons of Mass Destruction: An Encyclopedia of Worldwide Policy, Technology and History, Volume 1*

B. Violations of the Protocol.

Several countries have deployed or prepared chemical weapons in spite of the treaty. Spain and France did so in the Rif War before the treaty came into effect in 1928, Italy used mustard gas against Abyssinia in 1935 and Japan used chemical weapons against China from 1938 to 1941. In the Second World War, the U.S., Great Britain, and Germany prepared the resources to deploy chemical weapons, stockpiling tons of them, but refrained from their use due to the balance of terror: the probability of horrific retaliation. There was an accidental release of mustard gas in Bari, Italy causing many deaths when a U.S. ship carrying CW ammunition was sunk in the harbor during an air raid. After the war, thousands of tons of shells and containers with tabun, sarin and other chemical weapons were disposed of at sea by the Allies.

Early in the Cold War, Great Britain collaborated with the U.S. in the development of chemical weapons. The Soviet Union also had the facilities to produce chemical weapons but their development was kept secret. During the 1980-88 Iran-Iraq War and the 1991 uprisings in Iraq, the government of Saddam Hussein used several different chemical agents, including mustard gas, sarin, and VX, against Iran and against Iraqi rebels in instances such as the Halabja chemical attack. Both the Syrian government and opposition forces accused each

other of using chemical weapons in 2013 in Ghoula and Khan al-Assal during the Syrian civil war, though as any such use would be within Syria's own borders[6], rather than in warfare between state parties to the protocol, the legal situation is less certain.[A 2013 United Nations report confirmed the use of sarin, but did not investigate which side used chemical weapons. In 2014, the Organisation for the Prohibition of Chemical Weapons confirmed the use of chlorine gas in the Syrian villages of Talmanes, Al Tamanah and Kafr Zeta, but did not say which side used the gas.

C. Subsequent interpretation of protocol.

In 1966, United Nations General Assembly resolution 2162B called for, without any dissent, all states to strictly observe the protocol. In 1969, United Nations General Assembly resolution 2603 (XXIV) declared that the prohibition on use of chemical and biological weapons in international armed conflicts, as embodied in the protocol - though restated in a more general form, were generally recognized rules of international law[7]. Following this, there was discussion of whether the main elements of the protocol now form part of customary international law, and now this is widely accepted to be the case. There have been differing interpretations over whether the protocol covers the use of harassing agents, such as adamsite and tear gas, and

[6] Scott Spence and Meghan Brown (8 August 2012). Syria: international law and the use of chemical weapons
[7] Angela Woodward (17 May 2012). "The 1925 Geneva Protocol goes digital".

defoliants and herbicides, such as Agent Orange, in warfare. The 1977 Environmental Modification Convention prohibits the military use of environmental modification techniques having widespread, long-lasting or severe effects. Many states do not regard this as a complete ban on the use of herbicides in warfare, but it does require case-by-case consideration. The 1993 Chemical Weapons Convention effectively banned riot control agents from being used as a method of warfare, though still permitting it for riot control.

In recent times, the protocol has been interpreted to cover internal conflicts as well international ones. In 1995, an appellate chamber in the International Criminal Tribunal for the former Yugoslavia stated that "there had undisputedly emerged a general consensus in the international community on the principle that the use of chemical weapons is also prohibited in internal armed conflicts." In 2005, the International Committee of the Red Cross concluded that customary international law includes a ban on the use of chemical weapons in internal as well as international conflicts.

3. International Humanitarian Law.

International humanitarian law (IHL) is a part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practise considered by them as legally binding, and in general principles, while IHL applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct, part of international law set out in the United Nations Charter IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It is the new name of Laws of War and consists of The Hague Law, Geneva Law, and Protocol 1977, which only used for the armed conflict.[8] Even though there are some changes in the term of IHL, the main goal of it is to limit the effects of war on people and property and to protect particularly vulnerable persons.

[8] Haryomataram, *Pengantar Hukum Humaniter*, pg.44.

A. History of International Humanitarian Law.

Although IHL traces its philosophical origins back to antiquity, it was not until the 19th century that nations began in earnest to adopt binding treaties and military codes to govern armed conflict. The beginning of humanitarian law was in 1864 with the first Geneva Convention; the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; influenced by one of the bloodiest battles of the nineteenth century in Solférino. In 1859, Henry Dunant, a Swiss businessman traveling through Solférino, Italy, witnessed the aftermath of a bloody battle between French and Austrian armies. As the armies departed, Dunant saw the suffering of thousands of wounded and dying men who lay unattended on the battlefield. Dunant enlisted nearby residents to provide what relief they could, but despite their efforts, thousands died. Greatly moved by the experience, Dunant wrote "A Memory of Solférino," which described the plight of the victims of war.[8] Dunant called for an international agreement on the treatment of battlefield casualties and proposed the establishment of a civilian volunteer relief corps to care for the wounded. He wrote:

[8] American Red Cross, "Development of IHL", http://www.redcross.org/images/MEDIA_CustomProductCatalog/m3640105_IHL_Development.pdf downloaded Wednesday, 10 December 2014, pg.1.

"Would it not be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted, and thoroughly qualified volunteers?"

In his book, Dunant not only described the battle, but tried to suggest and publicize possible measures to improve the fate of war victims. He presented three basic proposals designed to mitigate the suffering of the victims of war.[9] To this end he proposed:

1) That voluntary societies be established in every country which, in time of peace, would prepare themselves to serve as auxiliaries to the military medical services.
2) That States adopt an international treaty guaranteeing legal protection to military hospitals and medical personnel.
3) That an international sign of identification and protection of medical personnel and medical facilities be adopted.

These three proposals were simple, but they have had deep and lasting consequences.

1) The whole system of National Red Cross or Red Crescent Societies (of which there are today 188 around the world) stems from the first proposal;

[9] Peace Operations Training Institute, *International Humanitarian Law and the Law of Armed Conflict*, second edition, (USA: Peace Operations Training Institute, 2012), pg.14-15.

2) The second proposal gave birth to the "First Geneva Convention" in 1864;
3) The third proposal led to the adoption of the protective emblem of the Red Cross or the Red Crescent.

Dunant's call for an international conference to draft an agreement on the treatment of battlefield casualties was answered in 1864 when the Swiss government hosted a conference in Geneva at the suggestion of Dunant's newly formed International Committee for the Relief of Military Wounded (which would become the International Committee of the Red Cross or ICRC in 1876).[10] Diplomats from a number of nations, as well as representatives of military medical services and humanitarian societies, adopted a treaty known as the first Geneva Convention, containing 10 articles specifying that:

1) Ambulances, military hospitals, and the personnel serving with them are to be recognized as neutral and protected by parties to a conflict;
2) Civilians and medical personnel who assist the wounded are to be protected;
3) Wounded or sick combatants are to be collected and cared for by either party; and

[10] American Red Cross, "Development of IHL", *Op.cit.*, pg.2.

4) The symbol of a red cross on a white background (the reverse of the Swiss flag) will serve as a protective emblem to identify medical personnel, equipment, and facilities.

Developing alongside the Geneva Conventions were The Hague Conventions created by states in order to govern the conduct of war. Then in 1977, two Additional Protocols to the Geneva Conventions were adopted.[11] The Additional Protocols supplement the protections under the Geneva Conventions. Protocol I expands protection for the civilian population and military and civilian medical workers in international armed conflicts. Protocol II extends similar protections during non-international armed conflicts. As of 2011, 170 nations have ratified Protocol I and 165 have ratified Protocol II.

Following the development of the first two Additional Protocols in the 1970s, the past three decades have brought further updates in the field of international law applicable to armed conflict. A number of legal instruments were drafted specifically restricting or regulating the use of certain weapons including:[12]

1) 1980 Convention on Certain Conventional Weapons (CCW).

[11] *Ibid.* pg.3.

[12] *Ibid.*

2) 1993 Convention on Chemical Weapons, 1995 Protocol on Blinding Laser Weapons (part of CCW).
3) 1997 Convention on Anti-personnel Mines (Ottawa Treaty).
4) 2008 Convention on Cluster Munitions.

With an estimated 300,000 children engaged in armed conflicts throughout the world, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted in 2000 to strengthen their legal protections and prevent their exploitation during hostilities. Some key provisions of the Optional Protocol include the prohibition of children under 18 years of age from taking direct part in armed conflict and being forcibly recruited into the armed forces of their countries.

B. Purpose of International Humanitarian Law.

There are three purposes of IHL such as:[13]

1) To give protection to combatants and civilians from excessive suffer.
2) To guarantee the fundamental human rights for captured combatants and other persons whose freedom has been restricted.

[13] Arlina Permanasari dkk, *Pengantar Hukum Humaniter,* (Jakarta: International Committee of the Red Cross, 1999), pg.12.

3) To limit human suffering caused by war or armed conflict.

The purpose of IHL is to limit the suffering caused by war by protecting and assisting its victims as far as possible.[14] The law therefore addresses the reality of a conflict without considering the reasons for or legality of resorting to force. It regulates only those aspects of the conflict which are of humanitarian concern. IHL is intended to protect war victims and their fundamental rights, no matter to which party they belong.

C. Sources of International Humanitarian Law

Since IHL is an integral part of Public International Law, its sources defined in Article 38 of the Statute of the International Court of Justice (ICJ Statute).

Article 38:

1) "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a) **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states;
   b) **international custom**, as evidence of a general practice accepted as law;

[14] ICRC, "International Humanitarian Law - Answers to Your Questions", http://www.redcross.org/images/MEDIA_CustomProductCatalog/m22303661_IHL-FAQ.pdf downloaded Friday, 2 January 2015, pg.14.

c) the **general principles of law** recognized by civilized nations;

d) subject to the provisions of Article 59, [.e. that only the parties bound by the decision in any particular case,] **judicial decisions** and the **teachings of the most highly qualified publicists** of the various nations, as subsidiary means for the determination of rules of law."

1) International Conventions/Treaties

Treaties (conventions) and custom are the main sources of international law. In respect to IHL, the main treaties are the Hague Convention 1907, the Geneva Conventions of 1949 and the Protocols Additional of 1977.

a) The Hague Convention 1907

The Hague Convention 1907 is one of the main conventions of IHL, which setting out restrictions on the means and methods of warfare. It was emerged from Hague conferences in 1907. The convention consists of

thirteen treaties, of which twelve were ratified and entered into force, and one declaration:[15]

- Convention I for the Pacific Settlement of Disputes;
- Convention II respecting the limitation of the employement of force for the recovery of Contract Debts;
- Convention III relative to the Opening of Hostilities;
- Convention IV respecting the laws and customs of War on Land;
- Convention V respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land;
- Convention VI relating to the status of Enemy Merchant Ships at the outbreak of Hostilities;
- Convention VII relating to the Convention of Merchant Ships into War Ships;
- Convention VIII relating to the Lying of Automatic Submarine Contact Mines;

[15] Haryomataram, *Pengantar Hukum Humaniter*, *Op.cit,* pg.47.

- Convention IX concerning Bombardment by Naval Forces in Time of War;
- Convention X for the Adoption to Maritime Warfare of the Principles of the Geneva Convention;
- Convention XI relative to Certain Restrictions with regard to the exercise of the Right of Capture in Naval War;
- Convention XII relative to the Creation of an International Prize Court;
- Convention XIII concerning the Rights and Duties of Neutral Powers in Naval War; and
- Declaration XIV Prohibiting the Discharge of Projectiles and Explosives from Balloons.

b) The Geneva Conventions 1949

The Geneva Conventions 1949 is another main conventions of IHL. It is providing protection to certain categories of vulnerable persons and consists of four conventions:

- The Geneva Convention I - *Geneva Convention for the Amelioration of the condition of the Wounded and Sick in Armed Forces in the Field.*
- The Geneva Convention II - *Geneva Convention for the Amelioration of the condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.*
- The Geneva Convention III - *Geneva Convention relative to the Treatment of Prisoners of War.*
- The Geneva Convention IV - *Geneva Convention relative to the Protection of Civilian Persons in Time of War.*

The Geneva Conventions regulate both international and non-international armed conflict. It also has Common Articles, the important articles which were written in the four of Geneva Conventions in the same articles.[16]

c) Protocols Additional to the Geneva Conventions 1977

[16] *Ibid.*, pg.49.

The two branches of law covered in the Hague and Geneva Conventions are further developed by the first two Protocols Additional to the Geneva Conventions on the protection of the Civilians 1977. These are referred to as:

- Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).
- Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

d) Other International Conventions

In addition to the three conventions above, there are some international conventions as another sources of IHL, such as:[17]

- 1925 Geneva Protocol for the prohibition of the Use in War of Asphyxiating, Poisonous of the Gasses,

[17] *Ibid.*, pg.51-52.

and of Bacteriological Methods of Warfare.

- 1954 First Hague Protocol for the Protection of Cultural Property in the Events of Armed Conflict.
- Convention on the Prohibition of Military or other hostile use of Environmental Modification Techniques (Enmod Convention 1976).
- Convention on the Prohibition or Restrictions on the use of Certain Conventional Weapons which may be deemed do be exessively injurious or to have indiscriminate effects (1980 Conventional Weapons Conventions).
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their or Destruction (CCW).
- 1995 Protocol on Blinding Laser Weapons.
- 1977 Ottawa Convention on the Prohibitions of the Use, Stockpiling,

Production and Transfer of Antipersonnel Mines and on their Destruction.

- 1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict.

2) International Custom

While treaties are only binding upon parties to a treaty, states can also be bound by rules of customary international law. However, this requires that there is usage to be found in the practice of states and considered by those states as practice.

A comprehensive study by the International Committee of the Red Cross (ICRC) on IHL and customary law indicates that the majority of rules enshrined in treaty law have received widespread acceptance and have had a far-reaching effect on practice. They thus have the force of customary law. Some provisions in the Hague and Geneva Conventions were reflections of existing customary law, whereas others have developed into customary law.[18] They are therefore binding on all states regardless of ratification,

[18] Governance Social Development Humanitarian Conflict, "Overview of the International Humanitarian Law", http://www.gsdrc.org downloaded Friday, 2 January 2015.

and also on armed opposition groups in the case of non-international armed conflict.

3) General Principles of Law

States are also bound by general principles of law. It is the legal principles common to major legal systems. In regard of IHL, one may think of the fundamental principles of IHL such as the principle of distinction or the principle of proportionality.

4) Judicial Decisions and Teachings

The decisions of international courts and tribunals, as well as those of municipal (domestic) courts and significant scholary writing relative to armed conflict may play a subsidiary role in helping to determine rules of IHL.

D. Principles of International Humanitarian Law.

IHL is founded upon the following principles:[19]

1) The Principle of Distinction

In order to spare the civilian population, armed forces shall at all times distinguish between the civilian population and civilian objects on the one hand, and military objectives on the other. Neither the civilian

[19] Diakona - International Humanitarian Law - Resource Centre, "Basic Principles of IHL", http://www.diakona.se downloaded Friday, 2 January 2015.

population as such nor individual civilians or civilian objects shall be the target of military attacks.

The principle of distinction underpinning many rules of IHL is that only fighters may be directly targeted. This is a necessary compromise that IHL provides for in order to protect civilians in armed conflict. Without the principle of distinction, they would be no limitation on the methods of warfare. The specific rules where the principle of distinction is set out concerns Article 48 of Additional Protocol I to the Geneva Conventions and Article 4(1) of the draft Additional Protocol II submitted by the ICRC to the Steering Committee for Human Rights (CDDH). This defines who is a combatant and a military object that can be lawfully attacked. Any direct attack against a civilian or civilian object is not only a violation of IHL but also a grave breach. Direct attacks against civilians and/or civilians objects are categorised as war crimes. Additionally, any weapon which is incapable of distinguishing between civilians/civilian objects and fighters/military objects is also prohibited under IHL. The principle is also a rule of customary international law,[20] binding on all states.

[20] *Customary IHL,* Rule 1.

2) Prohibition of Attacks against those *Hors de Combat*

The prohibition to attack any person *hors de combat* (those who are sick and wounded, prisoners of war) is a fundamental rule under IHL. For example, while a soldier could be targeted lawfully under normal circumstances, if that soldiers surrenders or is wounded and no longer poses a threat, then it is prohibited to attack that person.

3) Prohibition on the Infliction of Unnecessary Suffering

While IHL does permit violence, it prohibits the infliction of unnecessary suffering and superfluous injury. While the meaning of such terms is unclear and the protection may as such be limited, even fighters who may be lawfully attacked, are provided protection by this prohibition. The right of parties to an armed conflict to choose methods or means of warfare is not unlimited. No superfluous injury or unnecessary suffering shall be inflicted.

4) Principle of Proportionality

The principle of proportionality limits and protects potential harm to civilians by demanding that the least

amount of harm is caused to civilians, and when harm to civilians must occur it needs be proportional to the military advantage. The article where proportionality is most prevalent is in Article 51(5)(b) of Additional Protocol I to the Geneva Conventions concerning the conduct of hostilities which prohibits attacks when the civilian harm would be excessive in relation to the military advantage sought. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

5) Notion of Necessity

A dominant notion within the framework of IHL is military necessity, often the principle which clashes most with humanitarian protection. Military necessity permits armed forces to engage in conduct that will result in destruction and harm being inflicted. The concept of military necessity acknowledges that under the laws of war, winning the war or battle is a legitimate consideration. However, the concept of military necessity does not give the armed forces the

freedom to ignore humanitarian considerations altogether and do what they want. It must be interpreted in the context of specific prohibitions and in accordance with the other principles of international humanitarian law.

6) Principle of Humanity

The principle of humanity, and its absence during the battle of Solférino of 1859, was the central notion that inspired the founder of the International Committee of the Red Cross (ICRC), Henry Dunant. The principle stipulates that all humans have the capacity and ability to show respect and care for all, even their sworn enemies. The notion of humanity is central to the human condition and separates humans from animals.

4. State Responbility.

Under international law, a state's responsibility may be engaged in three different ways:[21]

1) Where an armed group is acting on instruction or under the direction or control of a state, even when the group

[21] Child Soldiers International, "State Responsibility to Prohibit the Recruitment and Use of Children by State-Allied Armed Groups", http://www.child-soldiers.org/user_uploads/pdf/part3stateresponsibilitytoprohibittherecruitmentuseofchildrenbystatealliedarmedgroups951239.pdf downloaded Friday, 2 January 2015.

does not have a legal basis and is not officially recognised by the state, its members are *de facto* state officials and the state is directly responsible for their acts.

2) Even when a state does not exercise effective or overall control over armed groups with which it is allied, it may still be directly responsible for human rights violations committed by state officials in support of these armed groups. Such would be the case, for example, if the armed forces or other state officials assist or are complicit in the recruitment and use of children by state-allied armed groups. State officials' support for the commission of crimes by allied armed groups, such as unlawful recruitment and use of children, may also carry individual criminal responsibility.
3) Under human rights and IHL, states have an obligation to protect individuals from abuses committed by non-state armed groups. The triggering of this obligation does not require proof of any sort of state support to the armed groups: the state has a stand-alone obligation to act with due diligence to protect individuals from human rights abuses. The state clearly fails to fulfil this

obligation if, instead of taking measures to protect children from being recruited and used by armed groups, it turns a blind eye and supports these groups with weapons or in other ways.

5. International Criminal Court (ICC)

International Criminal Court (ICC) is an independent international organisation, and is not part of the United Nation system. Governed by the Rome Statute of International Criminal Court (ICC Statute), the ICC is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.[22] Although the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organisations, individuals, corporations and other entities.

The ICC, located in The Hague, Netherlands, is the court of last resort for prosecution of genocide, war crimes, and crimes against humanity. Its founding treaty, the ICC Statute, entered into force on July 1, 2002, after ratification by 60 countries. As of July 2013, the ICC had 122 states parties, and opened investigations in eight countries.

[22] International Criminal Court - Cour Pénale Internationale, "About the Court".

The Court is composed of four organs. These are the Presidency, the Judicial Divisions, the Office of the Prosecutor and the Registry.[23]

a. The Presidency

The Presidency is responsible for the overall administration of the Court, with the exception of the Office of the Prosecutor, and for specific functions assigned to the Presidency in accordance with the Statute. The Presidency is composed of three judges of the Court, elected to the Presidency by their fellow judges, for a term of three years..

b. The Judicial Divisions

The Judicial Divisions consist of eighteen judges organized into the Pre-Trial Division, the Trial Division and the Appeals Division. The judges of each Division sit in Chambers which are responsible for conducting the proceedings of the Court at different stages. Assignment of judges to Divisions is made on the basis of the nature of the functions each Division performs and the qualifications and experience of the judge. This is done in a manner ensuring that each Division benefits from an appropriate combination of expertise in criminal law and procedure and international law.

[23] International Criminal Court - Cour Pénale Internationale, "Structure of the Court", http://www.icc-cpi.int/ downloaded Thursday, 18 September 2014.

c. The Office of the Prosecutor

The Office of the Prosecutor is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court..

d. The Registry

The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court.

e. Other Offices

The Court also includes a number of semi-autonomous offices such as the Office of Public Counsel for Victims and the Office of Public Counsel for Defence. These Offices fall under the Registry for administrative purposes but otherwise function as wholly independent offices. The Assembly of States Parties has also established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and the families of these victims.

6. Diplomatic Protection.

At least as important influence on the origins of international human rights law, is the exercise of diplomatic protection by states whose nationals have their rights violated in another state. But here again, there are significant differences. Diplomatic protection is cleary instituted in the interest of states, and not for the benefit of the individuals aggrieved themselves: the prejudice caused to the foreigner only may give rise to international responsibility because it is considered to constitute a damage to the state of the nationality of the person concerned. Indeed, the state remains in principle entirely free to extend diplomatic protection or refuse it. There is no obligation under international law for the state to extend diplomatic protection to its nationals: therefore diplomatic protection is not premised on the idea that individuals have rights under international law, although it does presuppose the existence of minimum standards of treatment for aliens and an obligation for each state, who owes in that respect a duty to other states, to comply with those standards.

7. The United Nations and Human Rights.

The charter of the United Nations was adopted on 26 June 1945. It referred to human rights and fundamental freedoms as one of the aims of the organization, mentioning spesifically the right to self-determination of peoples and non-discrimination as belonging to the internationally

recognized human rights. It was understood at the time that the protection of human rights would also enclose the protection of individual members of minorities who, therefore, would no longer need a specific system, as they enjoyed under the League of Nations. During the negotiations which led to the adoption of the UN charter, the foreign affairs minister of Panama, Ricardo J. Alfaro, with the support of cuba, had proposed the inclusion of the 'statement of essential human rights' produced in 1944 within the American Law Institute, an organization of judges, practitioners, and academics dedicated to the improvement of the rule of law, in whose work Alfaro had participated. The proposal was not retained. Therefore, altough it includes a number of references to 'human rights and fundamental freedoms' as well as to principles of non discrimination and self determination of peoples, the UN charter does not contain a catalogue of human rights. However, in order to make progress towards this objective, the economic and social council, the organ of UN tasked to promote International co-operation in the area of social and economic development, was mandated under Article 68 of the charter to create commissions on the thematic issues, including Human rights.

The Economic and social council first convened in London in January and February 1946. It then established the commision on human rights in a nuclear form, comprising through constituted met first between 29 April and 20 May 1946. At the end of its first session, it made a recommendation that work should begin, as soon as possible, on

the drafting of an International bill of rights: although at the first session of the UN General Assembly held in January-February and May-June 1946, the minister of foreign affairs Panama again proposed to adopt by resolution the draft bill elaborated within the American Law Institute, his proposal had been opposed by Eleanor Roosevelt, on behalf of the United States, in part because the draft had in fact never been adopted by the American law institute and would have met opposition from the domestic constituency of the United States. So the work was left to be done by the commission on Human Rights. The Nuclear Commission also proposed that the definitive commission be established in form of independent expert rather than governmental delegates.

In June 1946, The Ecosoc discussed its proposal. The Ecosoc established the commission on human rights as one of its first two 'Functional commisions' set up to assist t in its work [Ecosoc Resolution 9II of 21 June 1946]. But instead of independent experts, the commision on human rights was composed of the representatives of eighteen states, including five permanent members of the security council [China, France, The soviet Union, the United Kingdom and the United States]. It later grew in successive phases, in order to remain representative of the United Nations membership, which significantly expanded and diversified following the decolonization of the 1950s and 1960s. it had fifty-three members in 2006, at the time it was replaced by the Human rights council. And until the adoption of resolutions 1235(XLII) in 1967

and 1503 (XLVIII) in 1970, the commission primarily functioned as a drafting forum for the setting of standards, without and effective monitoring role.

The first task performed within the commission on Human rights was to agree on the text of a Declaration of Rights. The universal declaration of Human Rights was later implemented in the form of binding International treaties open to the ratification of the Member states of the United Nations. The initial idea was to have the declaration as such transformed into a binding legal instrument, proposed to the ratification of the states. Having one single universal convenant was considered to present on major advantage: it would offer a clear recognition of the fact that all the rights of the declaration were interconnected and interdependent. Within the Ecosoc, however, the delegates gradually came to consider that civil and political rights. On the one hand, and economic and social rights, on the other hand, called for different methods of implementation.

8. The Obligation of states to protect human rights beyond the National Territory.

When States adopt legislation with an extra-territorial scope of application, they generally allow their domestic courts to adjudicate on claims based on that legislation. The mainstream view has long been that there exists no general obligation imposed on states, under international human rights law, to exercise extra-territorial jurisdiction In order to contribute to the

protection and promotion of internationally recognized human rights outside their national territory. Indeed, the international responsibility of a state may not be engaged by the conduct of actors not belonging to the state apparatus unless they are in fact acting unfer the instructions of, under the direction or control of, that state In carrying out the conduct. The private-public distinction on which this rule of attribution is based is in part mooted by the imposition under international human rights law of positive obligations on states, since such obligations imply that the state must accept responbility not only for the acts its organs have adopted, but also for the omissions of these organs, where such omissions result in an insufficient protection of private persons whose rights or freedoms are violated by the acts of other non-state actors. Yet, until recently, such positive obligations had been affirmed only in situations falling under the 'jurisdiction' of the state i.e. in situations on which the state exercise effective control; outside the national territory. It is not presumed that the state exercise such control. And only in exceptional circumstanes could it be considered that the power its organs exercise on persons or property located abroad amounts to that state having 'jurisdiction' in a sense which would justify the extension of the positive obligations derived from any international human rights instruments binding upon the state. Thus, there was no clear obligation for states to control private actors operating outside their national terrirory. In order to ensure that these actors would not violate the human rights of others. This was the case even as regards

those private actors having the nationality of the state concerned, and whose behaviour therefore a state may decisively influence and on whom it may impose certain obligations in conformity with international law.

Article 55 and 56 of the UN charter suggest that states may have extra-territorial obligations to protect human rights. As regards economic and social rights, this interpretation is grounded on the wording of the international covenant on Economic social and cultural rights itself: not only is the covenant not explicitly restricted in its territorial scope of application. It also refers to international assitance and co-operation for the realization of economic, social and cultural rights, thereby pointing to the need for international solidarity in the realization of these rights. But this position is based, in addition, on three considerations.

First, the impression of extra-territorial obligations to protect on the home states of private actors, may be seen as a necessary complement to the extension of the rights of these actors under international law, particularly through multilateral, regional or bilateral free trade or investment agreements. For instance, M. Sornarajah argues that develop states ower a duty of control to the international community and do in fact have the means of legal control over the conduct abroad of multinational corporations. And he sees the imposition of such an obligation as the logical counterpart of the extensive protections afforded to foreign investors under both general international law and conventional

international law.[24] Consider also the summary of the problem offered in 2008 by the special representatives of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, in his 2008 report to the human rights council: in order to make up for this imbalance, the home states of private actors operating transnationally may have to contribute to policing the activities of these actors, in order for the obligations imposed on them in the state in which they operate to be truly effective.

Second, the imposition of an obligation to protect human rights beyond national borders may be seen as one specific manifestation of a broader duty of states not to allow their territory to be used by private actors in order to cause damage to another state. In his dissenting opinion to the advisory opinion of the international court of justice on the Legality of the threat or use of Nuclear weapons, Judge weeramantry referred in these terms to the principle that damage must not be caused to other nations, Judge weeramantry considered that the claim with which the court was confronted in that case- according to new Zealand, nuclear tests should be prohibited where this could risk having an impact on that country's population-should be decided in the context of such a deeply entrenched principle. Grounded in common sense, case law, international conventions, and customary international law. There is nothing that prohibits extending this principle, beyond enviromental law, to human

[24] M. Sornarajah, The International Law on foreign investment Cambridge University press,2004

rights law. On the contary. The committee on economic, social and cultural rights mentioned, in the context of the right to water, that any activties undertaken within the state party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.[25]

Third, apart from the human rights obligations directly imposed on the home state of private actors operating across borders, there is a need to take into account the human rights obligations of the state in which these private actors operate, and the correlative obligation of the home state, under general international law, not to create obstacles to the fulfilment of these obligations. Consider, for instance, the wording chosen by the committee on Economic, social and cultural rights when it adopted a general comment on the relationship between economic sanctions and respect for economic. Social and cultural rights: the notion that an obligation would be 'doubly' incumbent upon the state adopting sanctions refers to the fact that state is under a duty both to comply with its human rights obligations in designing and implementing sanctions, and to refrain from coercing other states into violating their own obligations under either the international convenant on economic, social and cultural rights or under other rules of internaional law. This is what article 18 of International law commision 2001 articles in responsibility another state : 'A state which coerces another state to commit an act is internationally

[25] UN Doc. E/c.12/2002/11

responsible for that act if: (a) the act would, but for the coercion, be an internationally wrongful act of the coerced state; and (b) the coercing state does so with knowledge of the circumstances of the act.

9. The role of the United Nations in the International Law.

United Nations is a term coined by the late President Franklin D Rosevelt. The term was first used in the United Nations statement on January 1, 1942. The UN Charter itself composed by representatives of fifty countries at the Conference on International Organization held in San Francisco April 25 until June 26, 1945. The representatives are working on the basis of proposals formulated by the representatives of China, the Soviet Union, Britain and the United States in Dumberton Oaks in August-October 1944. The Charter was signed on June 26, 1945. Poland, which was not represented at the conference include the signature at a later date, but nevertheless it remains one of the fifty-one members of the original. The UN was officially established on October 24, 1945, at which the UN Charter was ratified by China, Soviet Union, Britain and the United States, and by a majority of other signatories-signer. Hence today every 24th of October by the whole world celebrated as the United Nations. UN headquarters was built on land donated by the millionaire John D. Rockefeller Jr. The extent of 18 acres of land located on the edge of the East River, as well as supplemental ground of New York City. Building design was created by 11 leading architects from 11 countries at a cost of

US $ 67,093,290. The building consists of four parts, namely Dag Hammarskjold Library Building, Secretariat Building, where the Conference Building and General Assembly Building. Decorations inside the building is also derived from the contribution of some of the member countries. The establishment of the UN itself has a noble goal. The objectives include:

1. Maintaining world peace and security.

2. Develop relations of fraternity between the nations.

3. Cooperate internationally to solve the problems of international economic, social, cultural and humanitarian to promote respect for human rights and freedom-freedom rights.

4. To be a center for the conformity of the actions of nations in attaining these common goals.

In the act, the UN always basing on the following principles:

1. Based on the sovereign equality of all its members.

2. All members must comply with the full confidence of their obligations as set out in the charter.

3. All members must complete their international old disputes by peaceful means without endangering peace, security and justice.

4. All members should stay away in their international relation to the use of threats or violence against another country.

5. All members must give to the United Nations every assistance in any action being taken in line with the UN Charter, and they will not

help the countries against whom held preventive measures.

6. The United Nations must ensure that countries not in UN members act in harmony with these principles to the extent necessary to maintain international peace and security.

7. There is nothing in the Charter shall authorize the United Nations to intervene in matters which purely domestic issue of the state.

8. The UN official language is Chinese, English, French, Russian, Spanish. The languages used are English and French. Spanish language is also used in the General Assembly and the Economic and Social Council.

9. UN Membership is open to countries which love peace that accept the terms of the UN Charter, the funds in consideration of the organization, able and willing to accept the terms of it.

10. The original members than the United Nations are the countries that signed the UN requirements on January 1, 1942 or who took part in the conference, San Fransisico and who signed and ratified the United Nations Charter.

11. Other countries may be allowed to become a member by the General Assembly upon the recommendation of the Security Council.

12. Members may be suspended or expelled by the General Assembly upon the recommendation of the Security Council. They can be suspended if the Security Council held a coercive action against them or they are removed when they are repeatedly violating the principles

of the Charter. The Security Council can restore the rights to something that is in-suspended members. The UN as an international organization, has scientific equipment, namely:

1. The General Assembly
2. Security Council
3. The Economic and Social Council
4. The International Court of Justice
5. The Secretariat

10. Soverignty States.

Sovereignty is understood in jurisprudence as the full right and power of a governing body to govern itself without any interference from outside sources or bodies. In political theory, sovereignty is a substantive term designating supreme authority over some politic. It is a basic principle underlying the dominant Westphalian model of state foundation. In international law, a sovereign state is a nonphysical juridical entity that is represented by one centralized government that has sovereignty over a geographic area. International law defines sovereign states as having a permanent population, defined territory, one government, and the capacity to enter into relations with other sovereign states.[26] It is also normally understood that a state is neither dependent on nor subject to any other power or state.[27] The existence

[26] Shaw, Malcolm Nathan (2003). *International law*. Cambridge University Press. pg. 178.
[27] Wheaton, Henry (1836). *Elements of international law: with a sketch of the history of the science*. Carey, Lea & Blanchard. pg. 51

or disappearance of a state is a question of fact. While according to the declarative theory of state recognition a sovereign state can exist without being recognised by other sovereign states, unrecognised states will often find it hard to exercise full treaty-making powers and engage in diplomatic relations with other sovereign states.

11. Humanitarian Intervention.

Humanitarian intervention has been defined as a state's use of "military force against another state when the chief publicly declared aim of that military action is ending human-rights violations being perpetrated by the state against which it is directed. [28]This definition may be too narrow as it precludes non-military forms of intervention such as humanitarian aid and international sanctions. On this broader understanding, "Humanitarian intervention should be understood to encompas non-forcible methods, namely intervention undertaken without military force to alleviate mass human suffering within sovereign borders."[29] There is no one standard or legal definition of humanitarian intervention; the field of analysis (such as law, ethics or politics) often influences the definition that is chosen. Differences in definition include variations in whether humanitarian intervention is limited to instances where there is an absence of consent from the host state; whether humanitarian intervention is limited to punishment actions; and whether humanitarian intervention is limited to

[28] Marjanovic, Marko (2011-04-04) Is Humanitarian War the Exception?
[29] Scheffer, David J. "Towards a Modern Doctrine of Humanitarian Intervention." University of Toledo Law Review Vol 23. (1992) pg 253-274.

cases where there has been explicit UN Security Council authorization for action. [30]There is, however, a general consensus on some of its essential characteristics-

1. Humanitarian intervention involves the threat and use of military forces as a central feature
2. It is an intervention in the sense that it entails interfering in the internal affairs of a state by sending military forces into the territory or airspace of a sovereign state that has not committed an act of aggression against another state.
3. The intervention is in response to situations that do not necessarily pose direct threats to states' strategic interests, but instead is motivated by humanitarian objectives.

The subject of humanitarian intervention has remained a compelling foreign policy issue, especially since NATO's intervention in Kosovo in 1999, as it highlights the tension between the principle of state sovereignty – a defining pillar of the UN system and international law – and evolving international norms related to human rights and the use of force. [31]Moreover, it has sparked normative and empirical debates over its legality, the ethics of using military force to respond to human rights violations, when it should occur, who should intervene, and whether it is effective.

[30] Jennifer M. Welsh. *Humanitarian Intervention and International Relations*. Ed. Jennifer M. Welsh. New York: Oxford University Press, 2004.

A. Philosophy of Humanitarian Intervention.

One of the first champions of the duty of humanitarian intervention to prevent atrocities around the world, was the Victorian liberal John Stuart Mill, who wrote in his 1859 essay *A Few Words on Non-Intervention*:[32] "There seems to be no little need that the whole doctrine of non-interference with foreign nations should be reconsidered, if it can be said to have as yet been considered as a really moral question at all. To go to war for an idea, if the war is aggressive, not defensive, is as criminal as to go to war for territory or revenue; for it is as little justifiable to force our ideas on other people, as to compel them to submit to our will in any other respect. But there assuredly are cases in which it is allowable to go to war, without having been ourselves attacked, or threatened with attack; and it is very important that nations should make up their minds in time, as to what these cases are... To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another, and between civilized nations and barbarians, is a grave error.

According to Mill's opinion (in 1859) barbarous peoples were found in Algeria and India where the French and British armies had been involved. Mill's justification of intervention was overt imperialism. First, he argued that with "barbarians" there is no hope for "reciprocity", an international fundamental. Second, barbarians are apt

[32] John Stuart Mill (1859) *A Few Words on Non-Intervention*

to benefit from civilized interveners, said Mill, citing Roman conquests of Gaul, Spain, Numidia and Dacia. Barbarians, "have no rights as a nation, except a right to such treatment as may, at the earliest possible period, fit them for becoming one. The only moral laws for the relation between a civilized and a barbarous government, are the universal rules of morality between man and man." While seeming wildly out of kilter with modern discourse, a similar approach can be found in theory on intervention in failed states. Of more widespread relevance, Mill discussed the position between "civilized peoples". "The disputed question is that of interfering in the regulation of another country's internal concerns; the question whether a nation is justified in taking part, on either side, in the civil wars or party contests of another: and chiefly, whether it may justifiably aid the people of another country in struggling for liberty; or may impose on a country any particular government or institutions, either as being best for the country itself, or as necessary for the security of its neighbours.

Mill brushes over the situation of intervening on the side of governments who are trying to oppress an uprising of their own, saying "government which needs foreign support to enforce obedience from its own citizens, is one which ought not to exist". In the case however of a civil war, where both parties seem at fault, Mill argues that third parties are entitled to demand that the conflicts shall cease. He then moves to the more contentious situation of wars for liberation.

"When the contest is only with native rulers, and with such native strength as those rulers can enlist in their defence, the answer I should give to the question of the legitimacy of intervention is, as a general rule, No. The reason is, that there can seldom be anything approaching to assurance that intervention, even if successful, would be for the good of the people themselves. The only test possessing any real value, of a people's having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation. I know all that may be said, I know it may be urged that the virtues of freemen cannot be learnt in the school of slavery, and that if a people are not fit for freedom, to have any chance of becoming so they must first be free. And this would be conclusive, if the intervention recommended would really give them freedom. But the evil is, that if they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent. No people ever was and remained free, but because it was determined to be so.

B. Humanitarian Intervention Legal grounds.

Humanitarian intervention is a concept that can allow the use of force in a situation when the UN Security Council cannot pass a resolution under Chapter VII of the Charter of the United Nations due to veto by a permanent member. Chapter VII allows the Security Council to take action in situations where there is a "threat to the peace, breach of the peace or act of aggression". However, any resolution to that effect must be supported by all five permanent members. The reference to the "right" of humanitarian intervention was, in the post Cold-War context for the first time invoked in 1990 by the UK delegation after Russia and China had failed to support a no-fly zone over Iraq. Therefore, in addition to humanitarian objectives the concept is designed to circumvent the UN Security Council by invoking a right. However, critics base their arguments on the 1648 treaty of Westphalia, which states the rights of sovereign nations to act freely within their own borders. This is upheld in the UN Charter of 1945, where in article 2(7) it is stated that "nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state." Thus, because both proponents and opponents of humanitarian intervention have their legal grounds on the charter of the United Nations, there is still an ongoing controversy as to whether

sovereignty or humanitarian causes should prevail. The United Nations has also continuously been involved with issues related to humanitarian intervention, with the UN intervening in an increased number of conflicts within the borders of nations.

B. Theoritical Framework.

Legal theory of Monism is the view that reality consists of one fundamental ultimate essence This Theory is proclaimed by Hans Keller to hold the supremacy of international law. Monists accept that the internal and international legal systems form a unity. Both national legal rules and international rules that a state has accepted, for example by way of a treaty, determine whether actions are legal or illegal. [33]In most so-called "monist" states, a distinction between international law in the form of treaties, and other international law, customary international law or Jus cogen is made; such states may thus be partly monist and partly dualist[34]. In a pure monist state, international law does not need to be translated into national law it is just incorporated and have effects automatically in national or domestic laws. The act of ratifying an international treaty immediately incorporates the law into national law; and customary international law is treated as part of national law as well. International law can be directly applied by a national judge, and can be directly

[33] Pieter Kooijmans, Internationaal publiekrecht in vogelvlucht, Wolters-Noordhoff, Groningen, 1994, pg. 82.
[34]Marko Novakovic, Basic Concepts of Public International Law - Monism & Dualism", Belgrade 2013.

invoked by citizens, just as if it were national law. A judge can declare a national rule invalid if it contradicts international rules because, in some states, the latter have priority. In other states, like in Germany, treaties have the same effect as legislation, and by the principle of lex posterior, only take precedence over national legislation enacted prior to their ratification. In its most pure form, monism dictates that national law that contradicts international law is null and void, even if it predates international law, and even if it is the constitution From a human rights point of view, for example, this has some advantages. Suppose a country has accepted a human rights treaty - the International Covenant on Civil and Political Rights for instance - but some of its national laws limit the freedom of the press. A citizen of that country, who is being prosecuted by his state for violating this national law, can invoke the human rights treaty in a national courtroom and can ask the judge to apply this treaty [35]and to decide that the national law is invalid. He or she does not have to wait for national law that translates international law. His or her government can, after all, be negligent or even unwilling to translate.

[35] Pieter Kooijmans, Internationaal publiekrecht in vogelvlucht, Wolters-Noordhoff, Groningen, 1994, pg. 84.